

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO: 04CV12058WGY

**BETTE J. RIVARD, as Administratrix of
the Estate of John A. Horton,
Plaintiff,**

v.

**DARTMOUTH HOUSE OF CORRECTION,
BRISTOL COUNTY, JOHN DOE, RICHARD
ROE, Bristol County Corrections Employees
the identity and number of who is presently
unknown to the Plaintiff,
Defendants/ Third Party Plaintiffs**

v.

**PRISON HEALTH SERVICES, INC. and
CORRECTIONAL HEALTH CARE SOLUTIONS, INC.
Third Part Defendants**

**DEFENDANTS BRISTOL COUNTY AND DARTMOUTH HOUSE OF CORRECTIONS'
OPPOSITION TO THE PLAINTIFF'S MOTION TO AMEND**

The defendant, Dartmouth House of Correction requests that this Court deny the Plaintiff's Motion to Amend the Complaint as to Thomas Hodgson, Glen H. Strugeon, Peter Berthiaume and the Briston County Sheriff's Office. The plaintiff is seeking to add the following as defendants.

As a threshold matter, the plaintiff has failed to comply with L.R. 15.1 which states in pertinent part:

- (A) **Amendments Adding Parties**-Amendments adding new parties shall be sought as soon as an attorney reasonably can be expected to have become aware of the identity of the proposed new party.
- (B) **Service on New Party**-A party moving to amend a pleading to add a new party shall serve, in the manner contemplated by Fed.R.Civ.P. 5(b), the motion to amend upon the proposed new party at least ten (10) days in advance of filing the motion, together with a separate document stating that date on which the motion will be filed.....L.R. 15.1

In the present case, plaintiff's counsel has not sought to add the proposed new parties as soon as reasonably can be expected to have become aware of the identity of the proposed new parties. Plaintiff has been in possession of the names and has been aware of the proposed defendants' identities for a significant period of time during the course of discovery but has delayed seeking to amend the complaint to add them as party defendants. Both Sheriff Hodgson and Glen H. Sturgeon are public officials whose identity is open to the public. With regard to the proposed defendant, Peter Berthiaume, the defendant identified him to the plaintiff by way of automatic discovery disclosure on February 1, 2005.

Accordingly, the time for the plaintiff to amend the complaint to add party defendants has long since passed. The additional proposed defendants would suffer prejudice if forced to answer a complaint, engage in discovery and otherwise prepare a defense for a jury when discovery is set to close on September 15, 2005.

Further, Plaintiff has failed to comply with Fed.R.Civ. P.5(b), as she failed to serve the motion to amend on the new party. As the Court is aware, L.R. 15.1 (B) mandates that a party moving to amend to add a new party to an action must serve the proposed new party with the

amended complaint at least ten (10) days in advance of the filing the motion. Here, no such service was on the proposed defendants. Accordingly, the plaintiffs' motion to amend should be denied on these grounds alone.

Lastly, plaintiff has failed to comply with L.R. 7.1. No conference was initiated by plaintiff's counsel in an attempt to resolve issues prior to filing a motion.

Accordingly, plaintiff's motion to amend is untimely and prejudices the proposed defendants Hodgson, Sturgeon, the Bristol County Sheriff's Department, and Peter Berthiaume.

The defendant/third party plaintiffs,
Defendant, Bristol County,
By its attorneys,

/s/ Regina M. Ryan

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CERTIFICATE OF SERVICE

I, Regina M. Ryan, hereby certify that on the 4TH day of August, 2005, I served the foregoing electronically and by causing a copy to be mailed, postage prepaid, directed to Robert M. Proulx, Esquire, Proulx Law Associates, P.C., 170 High Street, Suite 301, Taunton, MA 02780 and Elizabeth Rennard, Esquire, Koufman & Frederick, 265 Essex Street, Salem, MA 01970 Bruce Assad, Esq., Special Sheriff, Office of the Bristol County Sheriff, 400 Faunce Corner Road, North Dartmouth, MA 02747.

/s/ Regina M. Ryan
Regina M. Ryan

